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December 12, 2006

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: CC Docket No. 80-286
Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

On December 11, 2006 Richard A. Askoff of NECA, Steven D. Meltzer and John Kuykendall of John Staurulakis, Incorporated, and the undersigned met with Vickie S. Robinson, Albert Lewis, Gary D. Seigel, and Theodore H. Burmeister.

We discussed the operation of FCC rule section 36.125 (j) and its effects on small rural telephone companies. The attached notices of previous *ex parte* meetings on this subject were used in this meeting.

Sincerely,

Joseph A. Douglas

Attachments

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March 22, 2006

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Jurisdictional Separations Reform and the Jurisdictional Separations Freeze, CC Docket No. 80-286

Notice of *Ex Parte* presentation

Yesterday, Joe Douglas and Colin Sandy of the National Exchange Carrier Association (NECA); Jay Driscoll of the Independent Telephone and Telecommunications Alliance; Stuart Polikoff of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and Derrick Owens of the Western Telecommunications Alliance (collectively, the "Associations") met with Ian Dillner of Commissioner Tate's office to discuss the need to extend the current separations freeze, scheduled to expire in June of this year.

The Associations strongly support extension of the freeze as necessary to avoid imposing substantial administrative burdens on incumbent local exchange carriers (ILECs)[1] and to allow the Commission time to complete ongoing intercarrier compensation and universal service proceedings. Extension of the freeze on an interim basis will give the Commission time to consider carefully how changes in regulatory requirements (as well as evolving marketplace dynamics) actually affect the Commission's Part 36 separations rules. The Associations also expressed support of the legal analysis in a USTelecom letter responding to NARUC. USTelecom demonstrated that ordering an extension of the freeze on an interim basis without a referral to the Federal-State Joint Board on Separations is within the Commission's legal authority.

Consistent with the above, the Associations request the Commission act without delay to extend the freeze on an interim basis, pending resolution of ongoing regulatory proceedings and, as necessary,

[1] These burdens have been documented in recent *ex parte* filings before the Commission, most notably in a USTelecom White Paper entitled "Paving the Way for Jurisdictional Separations Reform". *See* Letter from Robin E. Tuttle, USTelecom, to Marlene H. Dortch, FCC (Dec. 21, 2005), Attachment (*USTelecom White Paper*).

institution of additional proceedings to consider specifically how the separations rules should be conformed to revised intercarrier compensation and universal service regimes.

The Associations also discussed an apparently unintended consequence of the 2001 separations freeze order, which created a “one-way ratchet” effect on the amount of Local Switching Support (LSS) a carrier receives. Specifically, the separations freeze order directed carriers that gain access lines and cross a dial equipment minutes (DEM) weighting threshold to use a lower DEM weighting factor and receive less LSS. However, the separations freeze order failed to address the effects on carriers that *lose* access lines and cross a DEM weighting threshold. Consequently, these carriers are unable to raise their DEM weighting factor and receive increased LSS, as the Commission’s rules otherwise would permit. This phenomenon is explained in greater detail in the attached document from JSI, Inc. The Associations support JSI’s position that when granting continuation of the separations freeze, the FCC should declare in its order that a change in DEM weighting apply to both increases and decreases in access lines. However, under no circumstances do we wish this existing inequity to be a stumbling block to an expeditious interim extension of the freeze.

Sincerely,

On Behalf of:

National Exchange Carrier Association, Inc.
Independent Telephone & Telecommunications Alliance
Organization for the Promotion and Advancement of Small Telecommunications Companies
Western Telecommunications Alliance

Jurisdictional Separations Factor Freeze

1. There is overwhelming support for continuing the jurisdictional separations allocation factor freeze beyond the current freeze period ending June 30, 2006.
2. The freeze obviates the need to perform costly traffic studies that have not been required since the beginning of the freeze period.
3. Federal High-Cost Local Switching support (LSS) is based in part on a Part 36 rule regarding local switching equipment and appropriately weighing dial equipment minutes of use (DEM). 47 CFR § 36.125
4. The DEM weight is a 1x, 2x, 2.5x or 3x multiple of DEM. The DEM weight is based on access lines served in a study area. It is not part of the costly traffic studies rendered unnecessary by the current factor freeze.
5. A study area serving fewer access lines is assigned a greater DEM weight. This DEM weight provides a study area with a greater amount of federal high-cost local switching support (LSS).
6. The threshold for 2.5x and 3x DEM weight is 10,000 access lines served. 47 CFR § 36.125 If a carrier's study area access lines increases and crosses this threshold the DEM weight changes from 3x to 2.5x.
7. The current FCC rule 47 CFR § 36.125(j) states:
    a. (j) If during the period from January 1, 1997, through June 30, 2006, the number of a study area's access lines increased or will increase such that, under §36.125(f) the weighting factor would be reduced, that lower weighting factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. The study area will restate its Category 3, Local Switching Equipment factor under §36.125(f) and use that factor for the duration of the freeze period.
8. This rule is a one-way ratchet for the duration of the freeze period.
    a. Carriers who realize an increase in access lines in their study area and cross a DEM weight threshold are required to use a lower factor for the duration of the freeze period.
    b. However, carriers who realize a decrease in access lines in their study area and cross a DEM weight threshold cannot use a higher factor for the duration of the freeze period.
9. It appears that the intent of the rule was to not freeze the DEM weight as carrier access changed during the freeze period. However, while increased access line changes required a change to the DEM weight, apparently no consideration was given to changing the DEM weight for decreases in access lines through a threshold level.
10. There are rural carriers that have realized a decrease in access lines in their study areas. This has happened, for example, as customers decrease their use of second lines for dial-up Internet service from the 2001 to the present.
11. When granting a continuation of the jurisdictional separations factor freeze, the Commission should recognize the DEM weight assignment mechanics and declare in its order that change in DEM weighting apply to both increases and decreases in access lines during any extension of the freeze.

John Staurulakis INCORPORATED

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April 26, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 80-286
Notice of Written *Ex Parte* Presentation

Dear Ms. Dortch:

On several occasions, representatives of John Staurulakis, Inc. ("JSI") have met with staff of FCC Commissioners and Wireline Competition Bureau staff on behalf of JSI's rural local exchange carrier clients to urge the Commission to extend the jurisdictional separations freeze and order that a change in Dial Equipment Minutes ("DEM") weighting factor apply to both increases and decreases in access lines during any extension of the freeze when access lines cross a DEM weighting factor threshold. [1]

Attached please find a presentation which supplements these meetings with requested data in support of JSI's proposal. JSI hereby requests that if the Commission determines that this matter cannot be addressed in the context of extending the jurisdictional separations freeze, that it immediately initiate an expedited notice and comment period to consider changes to its Rules so allow for adjustments to the DEM weighting factor when lines increases or decrease and cross a factor threshold.

[1] In the meetings the representatives discussed a written *ex parte* presentation which was filed in this docket. *See*, Letter from Douglas Meredith, Director – Economics & Policy, JSI, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* Presentation in CC Docket No. 80-286, dated Mar. 30, 2006.

Please contact the undersigned with any questions.

Respectfully submitted,

/s/ Douglas Meredith

Douglas Meredith
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cc: Ian Dillner, Office of Chairman Kevin Martin
Dana Shaffer, Office of Commissioner Deborah Taylor Tate
Scott Bergmann, Office of Commissioner Jonathan Adelstein
Paul Kjellander, State Chair, Federal-State Joint Board on Jurisdictional Separations
Steve Burnett
Michael Jacobs
Narda Jones
Katie King
Jeremy Marcus
Gary Seigel

Examples of the Financial Impact of the DEM Weighting Factor Adjustment

John Staurulakis, Inc.

BACKGROUND

The following information is provided to the Federal Communications Commission (FCC) as a supplement to various *ex parte* meetings John Staurulakis, Inc. (JSI) has had with FCC staff in the Wireline Competition Bureau and FCC Commissioner staff. In the meetings, JSI proposed that the Commission extend the jurisdictional separations freeze and order that adjustments to the Dial Equipment Minutes (DEM) Weighting Factor apply in the case of both increases and decreases in access lines during any extension of the freeze when access lines cross a DEM weighting factor threshold.

The DEM Weighting Factor adjustment is a required adjustment for study areas whose line counts increase and cross one of three DEM Weighting Factor thresholds (10,000, 20,000 or 50,000 study area lines). Based on the current FCC rules, the required adjustment is only for increases in study area lines; current FCC rules are silent for instances where study area lines decrease over time and cross one of the DEM Weighting Factor thresholds. JSI has assembled publicly available data from the Universal Service Administrative Company (USAC) as well as three company-specific case studies where rural local exchange carriers have experienced a decrease in study area lines during the jurisdictional separations factor freeze. The result of being unable to adjust for decreases in study area access lines is that these companies have had to forego a portion of federal universal service local switching support (LSS) due to the fact that the weighted portion of the DEM is a primary driver in the calculation of LSS.

<u>USAC Data Analysis</u>

JSI has analyzed the first quarter reports from the USAC from 2001 to 2006. Based on this analysis, JSI predicts there are approximately 18 local exchange carriers that have been impacted by the absence of an adjustment for access line decreases. The analysis is only approximate, because JSI was unable to determine which quarterly reporting period USAC publishes corresponds to the study area line counts used to determine whether a study area has passed a DEM Weighting Factor threshold. (For two of the JSI case studies below, the USAC first quarter data indicates no threshold crossing; however, based on actual LSS calculations these two companies have crossed a DEM Weighting Factor threshold during the jurisdictional separations factor freeze.)

The 18 companies whose study area lines have declined during the jurisdictional separations factor freeze and appear to have crossed a DEM Weighting Factor threshold are listed in Table 1. For purposes of LSS support, companies that experience a decline in study area lines below one of the DEM Weighting Factor thresholds receive less LSS than what they would receive if the rule permitted adjustment of LSS calculations for decreases in study area lines.

Table 1 indicates the location of these 18 companies, a sample of those who have realized a decline in study area lines and have likely received lesser amounts of LSS during the freeze period (actual verification of a change in the DEM Weighting Factor for specific companies is not publicly available; JSI has used USAC data to estimate the effect of the rule for this period.) These companies represent a diverse cross-section of the nation, from Alaska to Maine and from Minnesota to Louisiana.

It is important to note that the effect of the current rule will likely reach to other companies whose study area lines may decline below a DEM Weighting Factor threshold during an extension of the jurisdictional separations factor freeze. Based on first quarter 2006 data, approximately 20 more study areas have study area line counts in excess of the thresholds but are within 500 study area lines of a threshold. Absent the jurisdictional separations factor freeze, a decrease in study area lines to a level below a threshold would cause the DEM Weighting Factor to adjust thereby increasing the LSS that these companies would receive. If the rule is not changed to allow for two-way adjustments during an extension of the jurisdictional separations factor freeze, more companies are likely to be negatively impacted based on the current application of the rule.

COMPANY CASE STUDIES

To assess the financial impact of not allowing a DEM Weighting Factor threshold adjustment for decreases in study area lines, JSI has gathered data on three carriers: Hart Telephone Company, Star Telephone Membership Corporation, and Roanoke and Botetourt Telephone Company.

Hart Telephone Company

Hart Telephone Company (Hart) operates in Georgia. In 2001 it reported 10,444 study area lines for LSS calculations (in the first quarter 2001, USAC reports 10,443 study area lines). Beginning in 2001, Hart had 53 DSL lines in service. The number of DSL lines in service has grown steadily. At year end 2005, Hart had 1,530 DSL lines in service. Concurrent with an increase in DSL lines in service, Hart has seen a decline in study area lines: from 10,444 in 2001 to 9,644 in 2005. As will be seen in the other case studies, as DSL lines have increased, study areas lines have decreased, apparently reflecting a decline in the demand for second lines to business and residents for facsimile and/or Internet dial-up service after DSL service becomes available.

Hart crossed a DEM Weighting Factor threshold in 2004 when lines decreased below 10,000. The effect of the current freeze rule allowing for weighting factor adjustments only for study area line count increases caused Hart to forego $183,891 in 2004 LSS. This amount represents approximately 10 percent of all federal universal service Hart received and 2 percent of its total regulated revenues. These percentages are significant for a small rural local exchange carrier and relief of the current rule during the application of a freeze extension will permit Hart to receive support for local switching investments that are disproportionately large on a per line basis for small carriers. Hart received just over two million dollars ($2.01M) in total federal universal service support in 2005. Compared with 2001 this support level is about even: in 2001 Hart received $1.94M. The experience of level total federal payments between 2001 and 2005 is not expected as FCC changes to interstate access added a sizeable amount of former access revenue into the Interstate Common Line Support (ICLS) program. For Hart, the increase in ICLS amounted to nearly $0.7M in 2004.

<u>Star Telephone Membership Corporation</u>

Star Telephone Membership Corporation (Star) operates in North Carolina. In 2001 it had 20,474 study area lines and since 2001 has experienced a decline in study area lines. At year-end 2005 it had 19,596 study area lines. Like Hart, Star has seen an increase in DSL lines served. In 2001 it had 375 DSL lines and at the end of 2005 it reports serving 2,203 DSL customers.

Star crossed the DEM Weighting Factor threshold in 2002 when their access line count dropped below 20,000. As a result of the current freeze rule, Star's foregone LSS support in 2002 amounted to $215,487. The amount of LSS not received due to the freeze adjustment rule has increased over time and the 2005 preliminary impact is a foregone amount of $265,356. The 2002 amount of support represents approximately 8 percent of total federal universal service support and approximately 1.5 percent of total annual regulated revenues. The amount of LSS foregone due to the current freeze rule is significant for Star.

<u>Roanoke and Botetourt Telephone Company</u>

Roanoke and Botetourt Telephone Company (R&B) operates in Virginia. It is estimated that based on year-end 2005 study area lines, R&B will cross a DEM Weighting Factor threshold during 2005, as their access line count will drop below 10,000. In 2001, R&B had 11,638 access lines. Its end of year 2005 study area lines served totaled 9,751. R&B's DSL service has increased from 99 DSL lines served in 2001 to 1,621 DSL lines served in 2005.

As a result of the DEM Weighting Factor rule not allowing for adjustments to LSS when a factor threshold is crossed due to declines is study area lines, R&B is expected to forego $202,703 of LSS for 2005. JSI notes that the amount foregone would likely persist annually during an extension of the factor freeze unless the FCC clarified that the DEM Weighting Factor should be adjusted for both increases and decreases in study area lines during the jurisdictional separations factor freeze extension (the projection of future amounts foregone during any freeze extension applies to all similarly affected carriers).

This amount of support foregone represents approximately 20 percent of total universal service support received and approximately 2 percent of total regulated revenues.

SUMMARY

Based on these three case studies, it appears clear that the inability to adjust LSS for declines in study area lines represents a significant amount of revenue foregone for affected companies. This revenue is used for the provision and maintenance of universal service in their study areas. Providing clarification for a rule that specifically addresses increases in study area lines but is silent for decreases in study area lines is in the public interest. JSI recommends the Commission provide this needed clarification of how LSS is calculated during any extension of the current jurisdictional separations factor freeze and permit adjustments to the DEM Weighting Factor for both increases and decreases in study area lines.

TABLE 1
STUDY AREA LINE COUNTS
First Quarter 2001-2006

State	Study Area Name	2001	2002	2003	2004	2005	2006
AK	KETCHIKAN PUBLIC UTILITIES	11,425	11,686	11,241	10,615	10,177	9,856
AR	PRAIRIE GROVE TEL CO	9,651	9,986	10,051	10,018	9,878	9,801
CA	THE PONDEROSA TELEPHONE COMPANY	9,590	9,935	10,147	9,854	9,879	9,884
GA	HART TEL. CO.	10,443	10,565	10,444	10,263	10,111	9,826
LA	CENTURYTEL OF NORTHWEST LA, INC.	9,980	9,997	10,141	10,262	10,151	9,960
ME	SACO RIVER TELEGRAPH & TELEPHONE COMPANY	9,975	10,559	10,770	10,512	10,197	9,691
MI	WOLVERINE TEL. CO.	10,333	10,940	11,032	10,834	9,906	9,447
MN	MID-COMMUNICATIONS, INC. DBA HICKORYTECH	9,579	9,819	10,758	10,945	10,734	9,560
NJ	WARWICK VALLEY TEL. CO.-NJ	10,492	10,959	11,178	10,416	9,993	9,354
NY	FRONTIER COMM. OF SENECA GORHAM, INC.	10,059	10,232	10,088	9,954	9,671	9,452
NY	FRONTIER COMM. OF SYLVAN LAKE, INC.	20,151	20,892	21,213	20,847	20,192	19,292
OK	OKLAHOMA COMM SYSTEM	20,306	20,374	20,755	20,526	20,447	19,498
OK	PANHANDLE TEL COOP	21,235	18,195	18,131	17,957	17,745	17,508
OR	CASCADE UTIL INC	10,049	9,905	9,680	9,611	9,644	9,474
WI	CHEQUAMEGON COMMUNICATIONS COOPERATIVE, INC.	8,808	9,902	10,152	10,228	10,212	9,121
WI	CENTURYTEL OF MIDWEST WISCONSIN, INC.	9,545	10,082	9,916	9,624	9,546	9,330
WI	FRONTIER COMM.-ST. CROIX, INC.	10,076	10,410	10,083	10,199	10,461	9,424
WI	EAST OTTER TAIL TEL. CO.	18,792	19,227	20,062	18,924	18,603	18,379

Source: 1Q Line Counts Reported by USAC. (www.universalservice.org)